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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 201

UNITED STATES OF AMERICA, PETITIONER

v.

LEONARD H. CARTER, TRUSTEE OF UNION FABRICS, INC., BANKRUPT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The memorandum opinion of the referee in bankruptcy (R. 19–20) is unreported. The opinion of the District Court (R. 13–17) is reported in 73 F. Supp. 685. The opinion of the Court of Appeals (R. 28–31) is reported in 168 F. 2d 272.

JURISDICTION

The judgment of the Court of Appeals was entered on May 25, 1948. (R. 32.) The petition for a writ of certiorari was filed on August 6,

1948, and was granted on October 11, 1948. (R. 33.) The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. 1254.

QUESTION PRESENTED

Whether an estate in bankruptcy is liable for interest upon tax claims of the United States for the period from and after the date of the filing of the petition in bankruptcy until the claims are paid.

STATUTE INVOLVED

The pertinent provisions of the Bankruptcy Act are printed in Appendix A, *infra*, pp. 37–40.

STATEMENT

An involuntary petition in bankruptcy was filed against Union Fabrics, Inc., on December 20, 1939. (R. 3.) The United States and the State of New York filed tax claims, asking for interest to the date of payment of the claims. (R. 3–4.) The tax claims of the United States were for social security taxes for the years 1936, 1937, 1938 and 1939, income taxes for 1935 and 1936, and a miscellaneous tax for 1935 (capital stock), aggregating $9,865.35. (R. 3, 5, 13.) The New York State tax claims were for franchise taxes for 1936, 1937 and 1938 and for unemployment insurance taxes (R. 3, 13), aggregating in all $1,660.92 (R. 5). Thus, the total of the principal of the tax claims of the United States and the State of New York together amounted to $11,526.27.

(R. 5.) The interest claimed by the United States on its tax claims to the date of the filing of the petition in bankruptcy aggregated at least $1,026.67, and the interest claimed by the State of New York on its tax claims to the date of the filing of the petition in bankruptcy, aggregated $206.92. (R. 6.) The amount of interest at the rate of 6 percent per annum on $11,526.27, the aggregate of the claims of both the United States and the State of New York, from December 20, 1939, the date of the filing of the petition in bankruptcy, to February 6, 1947, the date of the trustee's petition to reopen the proceeding, referred to below, was $4,930.08 (R. 5.)

By notices dated July 1 and 2, 1946, the trustee in bankruptcy filed objections to the demands of the United States and of the State of New York for interest on these claims beyond the date of the filing of the petition in bankruptcy. (R. 3.) After consolidated hearings, the referee in bankruptcy, on January 24, 1947, filed separate findings of fact and conclusions of law and on the same date filed a consolidated memorandum overruling the trustee's objections to the allowance of interest to the date of payment on the claims of both the United States and the State of New York, and entered orders to that effect. (R. 4, 18–21.) Thereafter, the referee reopened the proceeding for the purpose of hearing a further objection by the trustee, based upon alleged equi-

table considerations, but sustained the objections to this evidence and made an order to that effect. (R. 4–6.)

Upon a petition for review, the district judge reversed the orders allowing interest on the tax claims to the date of payment and sustaining objections to the trustee's offer of proof at the rehearing. (R. 9–12.) He held that interest on the tax claims of both the United States and the State of New York should be treated in the same manner as interest on other claims and not allowed beyond the date of the filing of the petition. (R. 13–16.) With respect to the evidence offered to explain delay in the administration of the estate, he regarded such equitable considerations, if pertinent to the determination, as sufficiently shown by the records of the court to augment other reasons for the denial of the disputed interest. (R. 16–17, 28–29.)

The court below affirmed the orders of the District Court upon authority of its decision in *Saper* v. *City of New York,* 168 F. 2d 268,[1] decided the same day, as representing the view of the majority of the five judges, sitting in either the *Saper* case or in the instant case, who considered the issue here involved. Two of the three judges, who sat in the instant case, stated their personal views in the opinion below, which accord with

[1] For convenience, the opinion of the court below in the *Saper* case was printed as Appendix B, of the Government's petition for a writ of certiorari, pp. 16–25.

those of the Court of Appeals for the First Circuit in *Davie* v. *Green*, 133 F. 2d 451 (C. C. A. 1, 1943). They did not agree with the opinion of the other three judges of the court below who sat in the *Saper* case nor with the decision of the District Court here. However, they acquiesced in the decision of the court below in the *Saper* case, *supra*, since (R. 29):

> Such a mode of dealing with the appeal before us will settle the law in this circuit as to the allowance of interest on tax claims unless the Supreme Court should hereafter reach a different conclusion.

Review of the *Saper* case is pending in this Court, No. 168, this Term, and is to be heard immediately preceding the instant case. Appeal by the State of New York in the instant case is likewise pending, No. 200, this Term.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that interest on the tax claims of the United States should be allowed only to the date of filing of the petition in bankruptcy.

2. In failing to hold that interest on the tax claims of the United States should be allowed after the date of the filing of the petition in bankruptcy and to the date of the payment of these claims.

3. In affirming the order of the District Court.

SUMMARY OF ARGUMENT

It is undisputed that tax claims bore interest after bankruptcy prior to the 1938 amendments (Chandler Act) to the Bankruptcy Law. Section 57j of the Bankruptcy Act, which has remained substantially unchanged since 1898, directs allowance of such interest and was applied by this Court in *United States* v. *Childs*, 266 U. S. 304.

All of the Federal tax statutes here involved provide for 6 percent interest on unpaid taxes and that such interest shall constitute a part of the taxes. Moreover, beginning in 1924, Congress has specifically prescribed that interest shall accrue on tax claims against fiduciary estates, including the estates of insolvent persons. Thus, the Federal tax statutes here involved, construed *in pari materia* with Section 57j, are even more compelling to the result of allowing interest than were the taxing statutes considered in the *Childs* case, and evidence Congressional approval of the rule.

Although the Chandler Act in 1938 made sweeping amendments to the Bankruptcy Act, Section 57j was reenacted without material change. However, the court below concluded that changes in the status of tax claims resulting from amendments to Sections 57n and 64 evidenced a Congressional purpose, also to abolish the rule allowing interest on such claims after bankruptcy. We

believe that no such inference can properly be drawn from these amendments. In 1926, Section 64 was amended to subordinate tax claims to three-month wage claims, in addition to administration expenses which had always had the highest priority. Notwithstanding this reduced priority for taxes, the bankruptcy courts continued regularly to allow interest on tax claims after the commencement of bankruptcy. The 1938 amendments were purely procedural in so far as they affected tax claims; the sole purpose and result were to require governmental claims to be proved and filed in the same manner as other claims, instead of requiring the trustee to seek out and pay the tax claims. In fact, this change in procedure added nothing new—it merely codified the judicially devised bar order procedure under which tax authorities could be required to file their tax claims within a prescribed period or be barred from participation in the estate. We believe, therefore, that in so far as the 1938 amendments related to tax claims they were too unimportant to offset the strong inference that the reenactment of Section 57j was intended to continue in effect the settled rule allowing interest on tax claims after bankruptcy. The rule is too important, affecting as it does not only the Federal but also the state and local governments, to infer from such sparse materials a Congressional intent to change it. To the extent that changing the rule

would provide a new basis for tax exemption or tax forgiveness, it is in conflict with the established rule of construction that exemptions from taxation must be conferred by Congress specifically, and may not be implied.

Any doubt as to the present rule is removed by the fact that during the last session of Congress, the House of Representatives passed a bill which, *inter alia*, would have specifically amended Section 57j to forbid accrual of interest on taxes after the date of bankruptcy. The report of the House Judicial Committee clearly evidences the understanding of that body that existing law allows interest on tax claims after bankruptcy and that specific legislation is required to change the rule. A similar understanding on the part of the Judicial Conference is reflected in its similar recommendation for legislative change. Whatever equitable considerations may be involved in the question were not relied upon by either the First or Second Circuit Courts of Appeals, and should be addressed to Congress in any event.

ARGUMENT

I

THE RULE THAT INTEREST MAY ACCRUE ON TAX CLAIMS AFTER BANKRUPTCY AND UNTIL SUCH CLAIMS ARE PAID, DERIVES FROM SECTION 57j OF THE BANKRUPTCY ACT WHICH WAS REENACTED WITHOUT CHANGE IN 1938, AND FROM THE APPLICABLE TAXING STATUTES

A. SECTION 57j OF THE BANKRUPTCY ACT DIRECTS ALLOWANCE OF INTEREST ON TAX CLAIMS DURING BANKRUPTCY

Although, as noted above, there is conflict between the Courts of Appeals for the First and Second Circuits as to whether interest presently runs on tax claims after the filing of a petition in bankruptcy, it is undisputed that tax claims bore interest during bankruptcy prior to the 1938 amendments (Chandler Act) to the Bankruptcy Act. *Davis* v. *Green, supra,* at p. 453; the opinion below, R. 29–30.

The allowance of interest during bankruptcy on tax claims has been based upon Section 57j which, in substantially its present form, has been in the Bankruptcy Act since 1898.[2] That subsection presently provides as follows:

---

[2] The following shows the changes in Section 57j of the Bankruptcy Act of 1898 by the Chandler Act. The matter in brackets represents the portion of the old section that has been deleted. The matter in italics represents additions made by the Chandler Act. The remainder is unchanged.

"SEC. 57. PROOF AND ALLOWANCE OF CLAIMS.

* * * * * *

"j. Debts owing to the United States *or any State or sub-*

> j. Debts owing to the United States or any State or subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

The leading case is *In re J. Menist & Co.*, 290 Fed. 947, 949–950 (C. C. A. 2, 1923) in which the court below held that under the provisions of Section 57j, tax claims bore interest during bankruptcy and until payment, and was affirmed by this Court on that point without discussion, *sub nom. United States* v. *Childs*, 266 U. S. 304. However, the question was specifically briefed and argued in this Court. *United States* v. *Childs*, *supra*, pp. 305–306.[3] In its opinion, the court below had expressly decided the issue and held that under the Bankruptcy Act (*In re J. Menist & Co.*, *supra*, p. 950)—

---

division thereof [a State, a county, a district, or a municipality] as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."

[3] Thus, Point I of the trustee's brief (pp. 1–5) in *United States* v. *Childs*, *supra*, was that "The Government is not entitled to interest upon its claim for taxes after the filing of the petition in bankruptcy."

> section 57j requires penalties due to the United States, or a state, etc., to be allowed to the extent of the pecuniary loss suffered. The loss continues as much after petition filed as before.

Declaring that (p. 949)—

> in tax matters * * * one party commands and the other must obey, and again subject to constitutional limitations the commanding party may impose any terms of payment that it pleases, and it makes no difference whether the price of delayed obedience is called interest, or penalty, or fine, or additional tax; every increase over the amount that satisfies the tax, if paid the moment it is levied, is merely an additional exercise of the power of the taxing authority.[4]

it then went on to consider whether or not the exaction of 1 percent a month by the taxing statute there involved as the price of delay constituted more than the amount of pecuniary loss sustained by the delayed payment; and ruled against the Government that the excess beyond 6 percent per annum was not compensatory and therefore not allowable. On the Government's appeal, this Court held that the entire 1 percent per month interest represented only the price of delay and was therefore allowable. Thus, this Court affirmed the Court of Appeals in-

[4] See discussion at pp. 14–15, *infra*, and the taxing act provisions quoted in Appendix B, to the effect that the interest is added *as part of the tax*.

the ruling that interest during bankruptcy was authorized by Section 57j as compensation allowed to the extent of a pecuniary loss suffered. This Court's approval of this construction of Section 57j is also implicit in the following statement in the *Childs* opinion, *supra,* pp. 308, 309–310:

> The Circuit Court of Appeals adjudged the tax in the present case a debt and assigned against it interest at 6%; the court considered that that interest was compensation for the delinquency, anything in excess becoming penalty and within the prohibition of § 57–j. * * *
>
> * * * * *
>
> * * * Interest is put upon it and so denominated, distinguished from the 5% as penalty, clearly intended to compensate the delay in payment of the tax—the detriment of its nonpayment, to be continued during the time of its nonpayment—compensation, not punishment.

For other cases recognizing and applying the rule that interest accrues on tax claims during bankruptcy, see *Dayton* v. *Pueblo County,* 241 U. S. 588; *New York* v. *Jersawit,* 263 U. S. 493; *Meilink* v. *Unemployment Comm'n,* 314 U. S. 564; *In re Kallak,* 147 Fed. 276 (D. N. D. 1906); *In re Ashland Emery & Corundum Co.,* 229 Fed. 829 (D. Mass. 1916); *In re Clark Realty Co.,* 253 Fed. 938 (C. C. A. 7, 1918); *In re A. E. Fountain, Inc.,* 295 Fed. 873 (S. D. N. Y. 1924); *Horn* v. *Boone County, Neb.,* 44 F. 2d 920 (C. C. A. 8,

1930); *In re L. Gandolfi & Co.*, 42 F. Supp. 706 (S. D. N. Y. 1940); *In re Semon*, 11 F. Supp. 18, 20–21 (D. Conn., 1935), modified, 80 F. 2d 81 (C. C. A. 2, 1935). The summary statement to the contrary, found in the early case of *In re William F. Fisher & Co.*, 148 Fed. 907, 913 (D. N. J. 1906), was made in passing without discussion, and has not been followed.

It should be noted that the Court of Appeals for the First Circuit, in *Davie* v. *Green, supra*, at page 453, found further support for the rule of the *Childs* case in the last words of Section 57j. Thus, it noted that in enacting the Chandler Act amendments, the Congress (p. 453)—

> left untouched the last words of that section which provide for the payment of debts due the United States or any State or subdivision thereof with "such interest as may have accrued thereon according to law" which words the courts had repeatedly construed, rightly or wrongly, to mean interest to the date of payment.

In brief, the federal courts, except the court below in this case and in the *Saper* case, have repeatedly found in Section 57j the command that interest shall be allowed on tax claims during bankruptcy and until the date of payment of such claims. As the *Childs* case illustrates, the only difficulty which Section 57j has given the courts during this period has been distinguishing "in-

terest" from "penalties", which under that section cannot be allowed.

In the earlier case of *In re Kallak,* 147 Fed. 276 (D. N. D., 1906), the allowance of interest during bankruptcy on tax claims seems to have been predicated upon the highly preferred status of tax claims under Section 64 prior to its amendment in 1926.[5] And there is an intimation to the same effect in *In re J. Menist & Co., supra.* To the contrary, however, even after the amendment of Section 64 to subordinate tax claims to wage claims, the courts continued to interpret Section 57j as permitting interest to accrue on tax claims during bankruptcy. *Horn* v. *Boone County,* 44 F. 2d 920 (C. C. A. 8, 1930); *In re Semon,* 11 F. Supp. 18 (D. Conn., 1935), modified, 80 F. 2d 81 (C. C. A. 2, 1935). Finally, as noted hereafter (pp. 34–36), the history of H. R. 5693 during the second session of the 80th Congress demonstrates clearly that when Congress considered changing the rule, it would have done so by specifically amending Section 57j.

B. THE APPLICABLE FEDERAL TAXING STATUTES CONFIRM THE CONSTRUCTION OF SECTION 57j AS ALLOWING INTEREST ON TAX CLAIMS DURING BANKRUPTCY

The federal taxes involved in the instant case were levied under statutes which in each case prescribe interest at 6% for delay in payment and provide that such interest shall be collected *as*

[5] See discussion *infra*, at pp. 25–26.

part of the tax.[6] Under the decisions prior to the instant case, these provisions certainly would have been construed with Section 57j to require the allowance of interest on these taxes after bankruptcy and until the date of payment.

In addition, however, beginning with the Revenue Act of 1924, Congress made doubly clear its purpose that tax claims bear interest during bankruptcy, by making express provision as to interest on tax claims against fiduciary estates. This development may be traced back to Section 276 of the Revenue Act of 1924, c. 234, 43 Stat. 253, which was the predecessor of Section 294 (a) (1) and (c), of the Revenue Acts of 1934 and 1936, quoted in Appendix B, *infra*, pp. 42–43, imposing additions to the income tax in case of nonpayment. Section 276 (a) (1) of the 1924 Act was substantially identical with Section 294 (a) (1) of the 1934 Act quoted in Appendix B, *infra*, at p. 42. Section 276 (c) was new in the 1924 Act and read as follows:

> (c) In the case of estates of incompetent, deceased, or insolvent persons, there shall be collected interest at the rate of 6 per centum per annum in lieu of the interest provided in subdivisions (a) and (b) of this section.

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[6] These statutory provisions are set forth in Appendix B. Moreover, even without these specific statutory provisions, interest would be payable upon these tax claims until paid. *Billings* v. *United States*, 232 U. S. 261, 284–288.

In recommending this subsection, the Committee on Ways and Means explained its purpose as follows (H. Rep. No. 179, 68th Cong., 1st sess., p. 26 (1939–1 Cum. Bull. (Part 2) 241, 259)):

> Section 276 (c). Although estates of "insane, deceased, or insolvent persons" are excepted from the additions to the tax provided in section 250 (e) of the existing law [Revenue Act of 1921] no interest upon the amounts due and unpaid by such estates is there provided. This subdivision provides for interest at the rate of 5 percent.

In proposing interest at 6 percent, the Senate Committee on Finance made the following statement (S. Rep. No. 398, 68th Cong., 1st Sess., p. 32 (1939–1 Cum. Bull. (Part 2) 266, 288)):

> Section 276 (c). Although estates of "insane, deceased, or insolvent persons" are excepted from the additions to the tax provided in section 250 (e) of the existing law no interest upon the amounts due and unpaid by such estates is there provided. This subdivision provides for interest at the rate of 6 percent. * * *

The Revenue Act of 1926 changed Section 276 (c) to read substantially the same as the controlling Sections 294 (c) of the Revenue Acts of 1934 and 1936, Appendix B, *infra*, pp. 42–43. Instead of the first clause of Section 276 (c) of the 1924 Act, *supra*, reading: "In the case of estates of incompetent, deceased, or insolvent persons," the 1926 Act substituted: "For any period an estate is held by a fiduciary appointed by order of any

court of competent jurisdiction or by will." This amendment was made and explained on the floor of the Senate, and the reasons given make clear the Congressional intent that interest run against a fiduciary estate on preexisting tax claims until paid, as follows (67 Cong. Rec., Part 3, pp. 3377–3378):

> Mr. REED of Pennsylvania. Mr. President, the purpose of this amendment and of the three amendments which follow it is to take care of this situation:
>
> Under the bill as passed by the House there is some doubt as to whether the reduced rate of interest provided in this subdivision is applicable only in cases where the tax is imposed upon the estate, or whether it also includes cases where the estate is called upon to pay interest for the period before the estate came under the control of the fiduciary.
>
> For example, if notice is given and demand made upon a taxpayer, and he is delinquent in payment and dies, can there be collected out of the estate interest at the rate of 12 percent down to the time of his death? It seems to the committee that in such a case the relief provided in this subdivision should cover only the period when the property is under the control of the fiduciary.
>
> There is also some doubt as to what estates are included in the provisions of the House bill. The amendment now offered seeks to make it clear that the provision applies in

every case where an estate is held by a fiduciary appointed by a court or by will.

The House accepted the Senate amendment, as the following excerpt from the Conference Report shows (H. Rep. No. 356, 69th Cong., 1st Sess., p. 41 (1939–1 Cum. Bull. (Part 2) 361, 369)):

> Amendment No. 69: The House bill retained the existing law and provided that in the case of estates of incompetent, deceased, and insolvent persons there should be collected interest at the rate of 6 percent a year in lieu of interest at the rate of 1 percent a month for delinquencies in payment of taxes.
>
> Under the existing law there is considerable doubt whether the reduced rate of interest provided is applicable only to cases where the tax is imposed upon the estate, or also includes cases where an estate is called upon to pay interest for the period before the estate came under the control of the fiduciary, for example, if notice and demand is made upon the taxpayer, and he is delinquent in payment, and dies, can there be collected out of the estate interest at the rate of 1 percent a month down to the time of his death? Under the existing law there is also the difficulty of determining with accuracy the time when a person becomes incompetent or insolvent. The Senate amendment met the above difficulties by providing that the reduced interest rates should cover only the period when the property is under the control of a fiduciary

> appointed by order of any court of competent jurisdiction or by will. The House recedes.

Section 276 (c) of the Revenue Act of 1926 became Section 294 (c) of the Revenue Act of 1928, c. 852, 45 Stat. 791, and was continued without substantial change through successive revenue acts until the Revenue Act of 1938, including, as we have seen, the controlling Revenue Acts of 1934 and 1936.

In the Revenue Act of 1928, Section 701 (a) (5), the following definition appears:

> (5) The term "fiduciary" means a guardian, *trustee,* executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person. [Italics supplied.]

This definition is continued without change in the controlling Acts of 1934 as Section 801 (a) (6), and of 1936, Section 1001 (a) (6). *In re Semon, supra,* specifically held that a trustee in bankruptcy was a fiduciary within this definition.

It will be noted, Appendix B, *infra,* p. 43, that Section 404 of the Revenue Act of 1935 reduced the interest rate in the case of any internal revenue tax or customs duty to 6 percent. Hence, Section 294 (c) of the 1934 and 1936 Acts, respectively, became surplusage and was omitted when the 1938 Revenue Act was passed, as explained by the following quotation from the House Committee Report (H. Rep. No. 1860, 75th Cong., 3d Sess., p. 49 (1939–1 Cum. Bull. (Part 2) 728, 763)):

SECTION 294. FIDUCIARIES

Section 294 (c) of the Revenue Act of 1936 is not retained in this bill, since it is clearly surplusage. Prior to the enactment of section 404 of the Revenue Act of 1935, reducing the rates of interest on unpaid taxes from 1 percent per month to 6 percent per annum, the matter eliminated provided a special rule in the case of estates held by fiduciaries appointed by courts of competent jurisdiction or by will. Now that all unpaid taxes bear interest at the rate of 6 percent per annum, there is no further need for continuing the matter eliminated, and the interest rate in such cases is governed by other provisions of section 294.

Moreover, further confirmation of the Government's position is to be found in the provision contained in successive Revenue Acts prescribing the procedure for filing income tax claims in bankruptcy which originated with Section 282 of the Revenue Act of 1926, c. 27, 44 Stat. 9, and has been substantially reenacted in each successive revenue statute up to the present time. Section 274, Revenue Acts of 1928, c. 852, 45 Stat. 791; 1932, c. 209, 47 Stat. 169; 1934, c. 277, 48 Stat. 680; 1936, c. 690, 49 Stat. 1648, and Internal Revenue Code. In originally proposing this provision as part of the 1926 Act, the House Conference Report stated, *inter alia*, H. Rep. No. 356,

69th Cong., 1st Sess., p. 46 (1939–1 Cum. Bull. (Part 2) 361, 373):

> Interest for any period during which the estate of the taxpayer is under the control of the trustee or receiver appointed by the equity or bankruptcy court is provided at the rate of 6 percent a year in lieu of 1 percent a month in certain cases by sections 276 (e) and 279 (j).

Again, the Treasury Regulations, which throughout this period implemented these successive statutes, have explicitly provided at all times that the Government's tax claims in bankruptcy shall include interest to the date of payment. Thus in Treasury Regulations 69, promulgated under the Revenue Act of 1926, Article 1294, the following appears:

> A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in bankruptcy or receivership for the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding, or to the date of payment if payment is made in full prior to such termination. * * *

This provision has been in substance repeated in the Treasury Regulations in succeeding Revenue Acts. Treasury Regulations 74, promulgated un-

der the Revenue Act of 1928, Art. 1192; Treasury Regulations 77, promulgated under the Revenue Act of 1932, Art. 1192; Treasury Regulations 86, promulgated under the Revenue Act of 1934, Art. 274–2; Treasury Regulations 94, promulgated under the Revenue Act of 1936, Art. 274–2. In Treasury Regulations 101, promulgated under the Revenue Act of 1938, c. 289, 52 Stat. 447, approved February 7, 1939, subsequent to enactment of the Chandler Act the same language is continued without material change as follows:

> ART. 274–1. *Bankruptcy and receivership proceedings.*—* * *
>
> * * * * * * *
>
> * * * Such claim should cover the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding or to the date of payment if payment is made in full prior to such termination. * * *

The quoted provision is repeated in Treasury Regulations 103, Section 19.274–1, promulgated under the Internal Revenue Code and Treasury Regulations 111, Section 29.274–1, likewise promulgated under the Internal Revenue Code.

To summarize, the foregoing legislative history establishes that over a period of many years Congress understood that tax claims against estates held by fiduciaries, including bankruptcy,

trustees, bore interest until paid. Although these statutory provisions above discussed refer specifically to income taxes, there is no reason to suppose that claims for the other taxes here involved, namely, social security and capital stock taxes, were intended to be treated in any different manner.

Of course, this development of special interest provisions for fiduciary estates, commencing as it did in 1924, could not have been a factor in the 1923 decision of the court below in *In re J. Menist & Co., supra*, or in its affirmance by this Court in 1924 *sub nomine United States* v. *Childs, supra*. Obviously, it strongly confirms the result of those cases.

Again, the Chandler Act and the Revenue Act of 1938 were enacted by the same Congress (75th Congress, 3d Sess.), and within a month of each other,[1] and the above-quoted legislative history of the 1938 Revenue Act, *supra*, pp. 19–20, evidences that Congress continued to maintain the same policy as under the earlier revenue acts with respect to imposition of interest on tax claims against estates held by fiduciaries. Moreover, the Bankruptcy Act and the revenue acts, so far as they deal with interest on tax claims against bankrupt estates, are *in pari materia*. Hence, upon well settled principles, wherever possible, they

[1] The Chandler Act approved June 22, 1938; the Revenue Act of 1938, passed May 16, 1938, became a law without presidential approval.

are to be construed consistently so as to give effect to the provisions of both.[8] Here it is submitted that the Bankruptcy Act provisions correctly construed are clearly consistent with the pertinent provisions of the several revenue acts above discussed and here controlling. Indeed, the congressional purpose clearly evident in the revenue acts surely confirms the construction of the Bankruptcy Act for which the Government here contends.

Further, contrary to the statement contained in the opinion of the court below in the *Saper* case (Pet. p. 24, footnote 8), the Government does not imply by its argument in this connection that the Bankruptcy Act intended to treat federal tax claims more advantageously than state or municipal tax claims; rather, our contention is that the federal revenue legislation affords further support to the congressional purpose which we find expressed by the Bankruptcy Act, namely, to impose as part of the tax interest accruing after bankruptcy.

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[8] So Congress explicitly recognized in Section 902 (i) of the Social Security Act Amendments of 1939, reading as follows:

"(i) No part of the tax imposed by the Federal Unemployment Tax Act or by title IX of the Social Security Act, whether or not the taxpayer is entitled to a credit against such tax, shall be deemed to be a penalty or forfeiture within the meaning of section 57j of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, as amended."

See *United States* v. *New York*, 315 U. S. 510, 517, footnote 9.

II

NOTHING IN THE 1938 AMENDMENTS TO THE BANKRUPTCY ACT JUSTIFIES THE CONCLUSION THAT THE CONGRESS INTENDED TO CHANGE THE ESTABLISHED RULE THAT INTEREST ACCRUES ON TAX CLAIMS DURING BANKRUPTCY

The decision of the court below is based upon the proposition that Congress, by the "assimilation of tax claims to other debts" (*Saper* v. *City of New York*, 168 F. 2d at 270), intended also that tax claims, like other debts, should not bear interest during bankruptcy. This is the precise point of conflict with *Davie* v. *Green*, in which the Court of Appeals for the First Circuit rejected that proposition and held that the reenactment of Section 57j without substantial change amounted to Congressional adoption of the existing rule as to interest derived from that section. 133 F. 2d at 453. We submit that the view of the Court of Appeals for the First Circuit is correct.

A. THE 1938 AMENDMENTS TO THE BANKRUPTCY ACT WERE ENTIRELY PROCEDURAL IN THEIR IMPACT ON TAX CLAIMS, AND CANNOT SUPPORT THE INFERENCE THAT CONGRESS INTENDED TO CHANGE THE RULE ALLOWING INTEREST ON SUCH CLAIMS DURING BANKRUPTCY

The "assimilation of tax claims to other debts" referred to by the court below consists of the 1926 and 1938 amendments to Section 64 and the 1938 amendment to Section 57n. Prior to 1926, Section 64 (a) provided that "the court shall order the trustee to pay all taxes legally due and

owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors." In practice, this was construed to require the payment of tax claims ahead of all other claims except administration expenses. *In re A. E. Fountain, Inc.*, 295 Fed. 873, 876 (S. D. N. Y.); 6 Remington on Bankruptcy (4th ed., 1937) 335–336. In 1926, Section 64 (a) was amended to delete the words "in advance of the payment of dividends to creditors" and to substitute the words "in the order of priority as set forth in paragraph (b)"; under Section 64 (b) tax claims were listed after four classes of administration expenses and after three-month wage claims. The practical result of these amendments was to overrule the decision in *Oliver* v. *United States*, 268 U. S. 1, construing Section 64 as requiring payment of tax claims before wage claims. In other words, by the 1926 amendments, tax claims lost their position immediately after administration expenses, and were subordinated to three-month wage claims as well. However, the courts continued to allow interest on tax claims during bankruptcy after the 1926 amendment of Section 64. *Horn* v. *Boone County, supra; In re Semon, supra.*

The 1938 amendments to Sections 64 and 57n [9] made just one change with respect to tax claims—

[9] The following shows the changes in Sections 57n, 64a and b of the Bankruptcy Act of 1898, so far as pertinent, by the Chandler Act. The matter in brackets represents the

they relieved the trustee in bankruptcy of the burden of searching out tax claims by requiring that such claims be filed and proved in the same manner as other claims. This was merely a procedural change—adopted for the sole purpose of

portion of the old section that has been deleted. The matter in italics represents additions made by the Chandler Act. The remainder is unchanged.

"SEC. 57. PROOF AND ALLOWANCE OF CLAIMS.

* * * * *

"n. *Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: Provided, however, That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extention of time for the filing of claims by the United States or any State or subdivision thereof:* * * *.

* * * * *

"[n. Claims shall] not be proved against a bankrupt estate subsequent to six months after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment * * *.]

"SEC. 64. DEBTS WHICH HAVE PRIORITY.

"[a. The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality, in the order of priority as set forth in paragraph (b) hereof: *Provided*, That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court. Upon filing the receipts of the proper public officers for such payments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or

speeding up administration. H. Rep. No. 1409, 75th Cong., 1st Sess. (1937) 13; S. Rep. No. 1916, 75th Cong., 3d Sess. (1938) 5. Moreover, subjecting tax claims to a requirement of timely filing added nothing new to bankruptcy administration; rather, as pointed out by Judge Coxe in *In re Spotlight Productions,* 75 F. Supp. 458, 459 (S. D. N. Y.), it simply codified the judicially-devised bar order which achieved the same result. *New York* v. *Irving Trust Co.,* 288 U. S. 329; 3 Collier on Bankruptcy (14th ed., 1941) 327–328.

There are several reasons why this procedural amendment of 1938 cannot support the inference of the court below that Congress intended to abrogate the rule that tax claims bear interest during bankruptcy. First, the Chandler Act amendments to the Bankruptcy Act represented a most thorough-going reexamination of the lat-

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legality of any such tax the same shall be heard and determined by the court.]

"*a.* [b] The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be * * *

* * * * * *

"(4) [(6)] taxes [payable under paragraph (a) hereof] *legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: Provided, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court; and provided further, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court;* * *"

ter Act (H. Rep. 1409, *ibid.*, p. 2). In fact, it is impossible to assume that the draftsmen were unaware of the interest rule based upon Section 57j, because this rule, applicable as it is to federal, state and local tax claims, is involved in nearly every bankruptcy proceeding. In particular, Congress did not overlook Section 57j, but as a matter of fact, reenacted the complete section in the Chandler Act with a minor verbal change. See page 9, *supra*. Had it intended to overthrow the settled rule with respect to interest on tax claims, it seems reasonable to suppose that it would have manifested explicitly its purpose to change the established pre-existing law. In adopting language used in an earlier act, Congress is presumed to adopt also the construction given by the courts and by itself (in revenue legislation, *supra*, pp. 15–24) over a period of many years prior to the reenacted language. *Hecht* v. *Malley*, 265 U. S. 144, 153; *United States* v. *Ryan*, 284 U. S. 167, 174–175. *Helvering* v. *Hallock*, 309 U. S. 106, 119–121, cited by the District Court in this connection (R. 15–16), is not apposite, for in the *Hallock* case there was not, as here, a reenactment of the questioned statutory language (particularly Section 57j) subsequent to long and uniform administrative, judicial and legislative construction. In the *Hallock* case, Congress was silent after the judicial construction relied upon. Here, on the contrary, in the

Chandler Act itself, Congress reenacted the statute.

Secondly, the rule as to interest on tax claims applies to state and local taxes as much as it does to federal taxes. We believe that an intention to make a change in the law adverse to State and local governments should not be ascribed to Congress in the absence of far more persuasive evidence than is afforded by the 1938 amendments. Cf. *Swarts* v. *Hammer*, 194 U. S. 441, 444.

Finally, the decision below has, contrary to the well-settled principle, rested a tax exemption upon mere implication. Procedural assimilation of tax claims in bankruptcy with ordinary contract debts cannot disguise their difference in essential nature. The power to tax is an indispensable attribute of sovereignty, absolutely necessary for the support of the government, maintenance of law and order, and protection of life and property. Unlike his contract debts, the bankrupt's tax obligation is imposed without his consent and for the common welfare. *New Jersey* v. *Anderson*, 203 U. S. 483, 492; *United States* v. *New York, supra*, 315 U. S. 510, 515–516; *United States* v. *Bernstein*, 16 F. 2d 233, 234–235 (C. C. A. 8). In the case of a tax obligation, the obligor has not passed upon the debtor's credit and thus in a sense assumed the risk. Taxes are civil obligations, not personal conventions. *Guarantee Co.* v. *Title Guaranty Co.*,

224 U. S. 152, 160. Again, as this Court stated in *United States* v. *Childs*, *supra*, p. 308:

> The imposition of a tax is certainly a function of government and creates an obligation, and the power that creates the obligation can assign the measure of its delinquency—the detriment of delay in payment * * *.

The interest imposed as detriment for the delay in payment here is under the governing statutes, as much a part of the tax as the principal itself and rests (*Rodgers* v. *United States*, 332 U. S. 371, 374)—

> on the basic necessity of the Government to collect a carefully estimated sum of money by a particular date in order to meet its anticipated expenditures.

What this necessity is and what sum of money is required to meet it, is surely a matter peculiarly within the knowledge and province of the legislature and not the judiciary. Hence, the rule is fundamental that Congress alone possesses the power to grant a tax exemption and where granted, it is expressed, never implied.

Early in the history of the Bankruptcy Act of 1898, this Court held that nothing in that statute exempts property in the hands of a bankruptcy trustee from state and municipal taxes to which similar property in the same locality is subject. The same reasoning applies to tax claims against the bankrupt estate arising prior to the

bankruptcy. Thus, in refutation of an argument similar to that advanced here, in *Swarts* v. *Hammer*, 194 U. S. 441, 444, this Court said:[10]

> By the transfer to the trustee no mysterious or peculiar ownership or qualities are given to the property. It is dedicated, it is true, to the payment of the creditors of the bankrupt, but there is nothing in that to withdraw it from the necessity of protection by the State and municipality, or which should exempt it from its obligations to either. If Congress has the power to declare otherwise and wished to do so the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt.

The principle there expressed, formulated with particular application to state and municipal taxes, applies *a fortiori* to taxes imposed by Con-

[10] In the cited case this Court referred with approval to the opinion there of the Circuit Court of Appeals below, in which the following language here also pertinent appears (*Swarts* v. *Hammer*, 120 Fed. 256, 257 (C. C. A. 8, 1903):

"* * * Exemption from taxation is never presumed. The legislative intent to exempt property from taxation must be clearly and explicitly expressed. Whether Congress could rightfully exempt from state taxation the property of a bankrupt in the hands of a trustee in bankruptcy, and otherwise subject to taxation, we need not inquire. It has not attempted to do so, and it is highly probable it never will. The power of taxation, as well as the power to exempt from taxation, is a legislative, and not a judicial, function; and a bankrupt court, no more than any other court, can exempt from taxation property in the hands of one of its officers which is liable to taxation under the state law."

gress. Thus, in *United States* v. *Stewart*, 311 U. S. 60, 71, this Court said:

> In that posture of the case, respondent has succeeded only in casting some doubt on the proper construction of the statute. Yet those who seek an exemption from a tax must rest it on more than a doubt or ambiguity. *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 146; 163 U. S. 416, 423. Exemptions from taxation cannot rest upon mere implications. *United States Trust Co.* v. *Helvering*, 307 U. S. 57, 60.

In the instant case, the codifying procedural amendment of 1938 with respect to tax claims provide no basis for inferring a new cause for tax exemption or forgiveness.

To summarize, we believe that the presumption which flows from reenactment of a statutory provision after thorough reconsideration, together with the rule against implication of tax exemptions, precludes any inference that Congress by the procedural amendment of 1938 intended to change the rule that interest accrues on tax claims during bankruptcy.[11]

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[11] As a matter of fact, with the exception of claims based upon fixed liability evidenced by judgment or written instrument (Bankruptcy Act, Section 63a (1) and (5)), the statute does not express the rule generally applied to claims of private creditors, denying interest after the date of bankruptcy. This rule, as noted in the opinion of the court below in the *Saper* case (Pet. pp. 18–19), was developed in equity following English practice. *Sexton* v. *Dreyfus*, 219 U. S. 339, 344. Actually, the rule does not prevent the run-

B. THAT THE 1938 AMENDMENTS DID NOT CHANGE THE FORMER RULE IS CONFIRMED BY SUBSEQUENT CONGRESSIONAL UNDERSTANDING IN AN UNSUCCESSFUL EFFORT TO AMEND SECTION 57j

The history of H. R. 5693 in the last session of Congress indicates conclusively the understanding of Congress that by the 1938 amendments to the Bankruptcy Act it had not changed the established rule allowing interest on tax claims during bankruptcy. Section 11 of this bill, which was passed by the House of Representatives on June 8, 1948 (94 Cong. Rec. 7569–7572), would have amended Section 57j by adding a new paragraph, as follows:

> (2) Except where the estate of the bankrupt is solvent, interest accruing after the date of bankruptcy on taxes legally due and owing to the United States or to any State or any subdivision thereof shall not be allowed.

The Senate did not act upon the bill. The House action alone would be convincing evidence of the Congressional understanding that the rule allowing such interest was not changed by the 1938 amendments. However, this is not left to inference, because the report of the House Com-

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ning of interest during bankruptcy, and if the estate proves sufficient to discharge all claims in full, interest as well as principal is paid. *Am. Iron Co.* v. *Seaboard Air Line*, 233 U. S. 261, 266–267; *Johnson* v. *Norris*, 190 Fed. 459 (C. C. A. 5), certiorari denied, 232 U. S. 723. Thus, here, the court below has allowed a tax exemption, not by virtue of the command of the statute but by its own extension of a rule developed judicially.

mittee on the Judiciary (H. Rep. No. 2083, 80th Cong., 2d Sess. (1948), 5) specifically states:

> * * * The addition of clause (2) in the bill is intended to overrule an obsolete rule as to interest on delinquent tax debts. Interest on general unsecured debts, on unsecured Government debts other than taxes, and on debts entitled to priority under section 64a, is suspended at the date of bankruptcy so that, except in the rare case of a solvent estate, interest is allowable only to such date. * * * However, interest on delinquent tax debts is allowable to the date of payment * * *. Although, under the Chandler Act, a tax debt is required to be proved (sec. 57n) and its order of priority ranks below all administration costs and expenses, wages and costs and expenses of creditors successfully opposing a settlement or discharge, or procuring a conviction for an offense (sec. 64a (1) (2), (3)), thereby rendering obsolete the reasoning in the *Kallak* case, *nevertheless its rule has not been changed and therefore requires this statutory modification.* * * * And on overruling the *Kallak* case see *In re Union Fabrics, Inc.* (S. D., N. Y., 1947), 73 F. Supp. 685, appeal pending. [Italics supplied.] [12]

[12] The House Committee report (p. 5) also refers to the approval by the Judicial Conference of this amendment to Section 57j. In the Report of the Judicial Conference dated November 7, 1944 (p. 9), the Conference stated its approval of the recommendation of its Committee on Bankruptcy: "* * * that § 57j be amended to stop the running of

This is compelling evidence that Congress did not intend by the 1938 amendments to the Bankruptcy Act to change the rule allowing interest on tax claims during bankruptcy; to the contrary, Congress has specifically recognized that further legislation is necessary to change that rule.[12]

CONCLUSION

The decision of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted.

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interest and penalties on tax claims at the date of the filing of the petition in bankruptcy or debtor proceeding; * * *" This recommendation was renewed in the 1945 and 1946 sessions of the Conference. Report of the Judicial Conference, September Session, 1945 (pp. 16–17); Report of the Judicial Conference, October Session, 1946 (p. 15).

[12] The judgments of the court below in the instant case and in the related *Saper* case were rendered on May 25, 1948, while the report of the House Committee on the Judiciary was issued three days later on May 28. Thus, this material was not available to the court below.

APPENDIX A

Bankruptcy Act of 1898, c. 541, 30 Stat. 544:

SEC. 17 [as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 1]. DEBTS NOT AFFECTED BY A DISCHARGE.—a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; * * *.

(11 U. S. C. 1946 ed., Sec. 35.)

SEC. 57. PROOF AND ALLOWANCE OF CLAIMS.

* * * * * *

j. [as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 1]: Debts owing to the United States or any State or subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

* * * * * *

n. [as amended by the Act of May 27, 1926, c. 406, 44 Stat. 662, Sec. 13; Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 1]. Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved

and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: *Provided, however*, That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any State or subdivision thereof: * * *. (11 U. S. C. 1946 ed., Sec. 93.)

SEC. 64 [as amended by the Act of May 27, 1926, c. 406, 44 Stat. 662, Sec. 15; Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 1; Act of June 28, 1946, c. 512, 60 Stat. 323, Sec. 12]. DEBTS WHICH HAVE PRIORITY.

a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary fund and for the referees' expense fund; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, ir-

respective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this Act, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And provided further*, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [sic] entitled to priority, and rent owing to a

landlord who is entitled to priority by applicable State law: *Provided, however,* That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

(11 U. S. C. 1946 ed., Sec. 104.)

APPENDIX B

(1) As to the claims for the unpaid social security taxes for the years 1936, 1937, 1938, and 1939, imposed under Title VIII of the Social Security Act, and Internal Revenue Code, Chapter 9, Subchapter A, Part III, the applicable statutory provisions read as follows:

> Social Security Act of 1935, approved August 14, 1935, c. 531, 49 Stat. 620:
>
> * * * * *
>
> SEC. 807. (a) * * * If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.
>
> Internal Revenue Code:
>
> SEC. 1420. COLLECTION AND PAYMENT OF TAXES.
>
> * * * * *
>
> (b) *Addition to Tax in Case of Delinquency.*—If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.

As to the social security taxes imposed under Title IX of the Social Security Act, and Chapter 9, Subchapter C, of the Internal Revenue Code, the statutory provisions are substantially identical

with the above. Social Security Act, Sec. 905 (a); Internal Revenue Code, Sec. 1605 (b).

(2) As to the claim for unpaid income tax for 1935, imposed under the Revenue Act of 1934, the applicable statutory provisions read as follows:

> Revenue Act of 1934, c. 277, 48 Stat. 680:
>
> SEC. 294. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.
>
> (a) *Tax Shown on Return.*—
>
> (1) *General Rule.*—Where the amount determined by the taxpayer as the tax imposed by this title, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the date prescribed for its payment until it is paid.
>
> * * * * *
>
> (c) *Fiduciaries.*—For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of 6 per centum per annum in lieu of the interest provided in subsections (a) and (b) of this section.

As to the claim for unpaid income tax for 1936, imposed under the Revenue Act of 1936, the applicable statutory provisions read as follows:

> Revenue Act of 1936, c. 690, 49 Stat. 1648:
>
> SEC. 294. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.
>
> (a) *Tax Shown on Return.*—
>
> (1) *General Rule.*—Where the amount determined by the taxpayer as the tax

imposed by this title, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

* * * * * *

(c) *Fiduciaries.*—For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of 6 per centum per annum in lieu of the interest provided in subsections (a) and (b) of this section.

(3) As to the claim for unpaid capital stock tax for 1935, imposed under the Revenue Act of 1934, the applicable statutory provisions read as follows:

Revenue Act of 1934, c. 277, 48 Stat. 680:
SEC. 701. CAPITAL STOCK TAX.

* * * * * *

(d) * * * If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid. * * *

See also Revenue Act of 1935, c. 829, 49 Stat. 1014, Section 404, reading as follows:

SEC. 404. INTEREST ON DELINQUENT TAXES.

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

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